case of a corporation incorporated in two states, each taxes the transfer of stock only on the proportion of property in its jurisdiction. *Gardiner* v. *Carter*, 74 N. H. 507, 69 Atl. 939. Moreover, the taxing of the transfer of stock in a domestic corporation owning property outside the state may have to be similarly limited under the doctrine that property taxable elsewhere cannot be taxed by the state of incorporation. See *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194, 26 Sup. Ct. 36.

TRIAL — PROVINCE OF COURT AND JURY — RIGHT OF COURT TO QUESTION WITNESSES. — In the course of a trial for murder the judge questioned several witnesses in order to develop their testimony more fully than the prosecuting attorney had done. *Held*, that this is not error. *State* v. *Keehn*, 118 Pac. 851 (Kan.).

In England it has always been considered the right and duty of the trial judge to question witnesses already on the stand or even to call a new witness when he deems it desirable to bring out the truth more fully. *Coulson* v. *Disborough*, [1894] 2 Q. B. 316. A few American decisions also seem to give him a wide discretion in this matter. *Epps* v. *State*, 19 Ga. 102; *Lefever* v. *Johnson*, 79 Ind. 554. But the tendency in this country has been to restrict the exercise of this discretionary power. *Dunn* v. *People*, 172 Ill. 582, 50 N. E. 137; *Barlow Brothers Co.* v. *Parsons*, 73 Conn. 696, 49 Atl. 205. The principal case shows a wholesome reaction from this narrow policy. See 1 WIGMORE, EVIDENCE, § 784; 4 *id.* § 2484.

TRIAL — VERDICTS — SPECIAL FINDINGS. — In an action for negligence the defense of contributory negligence was interposed. In answer to a question of the court as to whether the plaintiff used due care, the jury answered, "We do not know." On a general verdict for the plaintiff the plaintiff obtained judgment. *Held*, that the judgment should be reversed. *Minor* v. *Stevens*, 118 Pac. 313 (Wash.).

In states where the jury can be required to render special findings the general rule is that a party can insist on a definite answer to interrogatories submitted to the jury. *Atchison, etc. Ry. Co.* v. *Hale*, 64 Kan. 751, 68 Pac. 612. Where the party does not insist on a definite answer, the better view is that a finding such as the one in the principal case is equivalent to a finding adverse to the party having the burden of proof of the issue. *Croan* v. *Baden*, 73 Kan. 364, 85 Pac. 532. *Contra, Darling* v. *West*, 51 Ia. 259, 1 N. W. 531. Contributory negligence is an affirmative defense in Washington. *Spurrier* v. *Front Street Cable Ry. Co.*, 3 Wash. 659, 29 Pac. 346. The decision of the principal case would therefore seem difficult to support.

TRUSTS — CESTUI'S INTEREST IN RES — APPORTIONMENT OF RENT BETWEEN LIFE-TENANT AND REMAINDERMAN. — A lease of trust property was made, by which "rent" was to be paid in a certain sum in cash at the signing of the lease and monthly payments thereafter. *Held*, that the sum paid on signing the lease should not be apportioned in monthly payments throughout the term to the successive *cestuis que trust*. *In re Archambault's Estate*, 81 Atl. 314 (Pa.).

Strictly, the cash payment here is not rent, but something given in addition to it. *Cf. Hatherton* v. *Bradburne*, 13 Sim. 599; *Ardesco Oil Co.* v. *North American Oil and Mining Co.*, 66 Pa. St. 375. See 2 WOOD, LANDLORD AND TENANT, § 445. Such a bonus paid for the privilege of obtaining the lease is a form of casual profits, and the decision appears sound in treating it as income and not *corpus*. A close analogy exists in the fines for renewal of a lease, always considered as income. *Milles* v. *Milles*, 6 Ves. 761. See LEWIN, TRUSTS, 12 ed., 876. And even if we follow the court and treat the payment as rent, it should properly

go to the life-tenant, for rent is not apportionable at common law, though paid in advance. *Agnew's Estate*, 17 Pa. Super. Ct. 201; *Ellis* v. *Rowbotham*, [1900] 1 Q. B. 740. It is obvious, however, that if a disproportionately large amount of the rent were paid down and a nominal amount yearly, it would be a lease unfair to the remainderman and void. *Cf. Doe d. Sutton* v. *Harvey*, 1 B. & C. 426; FAWCETT, LANDLORD AND TENANT, 3 ed., 53–54. For equity will compel the trustee to perform his duties impartially.

WILLS — EXECUTION — SIGNATURE OF ATTESTING WITNESS. — An attesting witness to a will inadvertently signed the testator's name instead of his own. A statute provided that each of the attesting witnesses should sign his name as a witness. *Held*, that the will is entitled to probate. *In the Matter of Jacobs*, 73 N. Y. Misc. 162 (Surr. Ct.).

The Statute of Frauds provided that devises of lands should be attested and subscribed by three or four witnesses. STAT. 29 CAR. II. c. 3, § 5. It is well settled by the decisions under the Statute of Frauds and statutes with like provisions that this requirement is satisfied by any writing *animo attestandi*. *Harrison* v. *Harrison*, 8 Ves. 185; *Goods of Olliver*, 2 Spinks Ecc. Cas. 57. The same result has generally been reached under statutes like the New York statute. *Morris* v. *Kniffin*, 37 Barb. (N. Y.) 336; *Garrett* v. *Heflin*, 98 Ala. 615, 13 So. 326. A similar statute in California, however, has been more strictly construed, the court holding that a provision that an attesting witness must sign his name is not satisfied by the signing of a name other than that of the witness. *Estate of Walker*, 110 Cal. 387, 42 Pac. 815. *Cf. Stewart* v. *Beard*, 69 Ala. 470. The view of the California court would seem preferable to that expressed in the principal case.

WITNESSES — COMPELLING TESTIMONY — SUBPŒNA DUCES TECUM TO EMPLOYEE TO PRODUCE EMPLOYER'S BOOKS. — An employee of a firm, being in charge of one of the departments of the business, was served with a *subpœna duces tecum* to produce certain documents which belonged to his employers, but were in the department of which he had charge. He refused to produce them. *Held*, that in the absence of evidence of authority from his employers, the order for a writ of attachment should be discharged. *Eccles & Co.* v. *Louisville & Nashville R. Co.*, 28 T. L. R. 67, 132 L. T. 86 (Eng., C. A., Nov. 17, 1911).

To enforce a *subpœna duces tecum* the document must be in the control of the witness. *Amey* v. *Long*, 9 East 473; *Lee* v. *Angas*, L. R. 2 Eq. 59. See 4 WIGMORE, EVIDENCE, § 2200 (4). What is sufficient control is largely a question of the facts of each case. *Campbell* v. *Earl of Dalhousie*, L. R. 1 H. L. Sc. 462. Although one may be legally the possessor of the document, another may have such custody of it as to warrant the issuing of a *subpœna* to him. *Corsen* v. *Dubois*, 1 Holt 239; *Amey* v. *Long*, 1 Camp. 14. On the other hand, it would seem that the legal possessor, though not having actual custody at the time, could be subpœnaed. *Steed* v. *Cruise*, 70 Ga. 168. But an employee ordinarily has no such control over his master's papers as to warrant his being ordered to bring them into court. *Queen* v. *Stuart*, 2 T. L. R. 144; *Crowther* v. *Appleby*, L. R. 9 C. P. 23. See *Lorenz* v. *Lehigh Nav. Co.*, 5 Leg. Gaz. (Pa.) 174. *Cf. King* v. *Daye*, [1908] 2 K. B. 333. So a steward has been held not compellable to produce papers belonging to his master. *Earl of Falmouth* v. *Moss*, 11 Price 455. *Cf. Attorney-General* v. *Wilson*, 9 Sim. 526. So as to a bank clerk. *President, etc. of Bank of Utica* v. *Hillard*, 5 Cow. (N. Y.) 153, 419. And a clerk in a public office. *Austin* v. *Evans*, 2 M. & G. 430. The rule laid down in the principal case that the party calling for the papers must show that the witness has the ability to bring them into court is well recognized. *Hall* v. *Young*, 37 N. H. 134.